

2013-1665, -1666, -1667

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ADJUSTACAM, LLC,
Plaintiff-Appellant,

v.

NEWEGG INC., NEWEGG.COM, INC., & ROSEWILL, INC.,
Defendants-Cross-Appellants
and

SAKAR INTERNATIONAL, INC.,
Defendant-Cross-Appellant

Appeals from the United States District Court for the Eastern District of Texas
in Case No. 10-CV-329, Chief Judge Leonard Davis

**DECLARATION OF DANIEL H. BREAN IN SUPPORT OF NEWEGG
INC., NEWEGG.COM, INC., & ROSEWILL, INC.'S OPPOSED MOTION
FOR ATTORNEYS' FEES, EXPENSES, AND COSTS**

I, Daniel H. Brean, hereby declare the following:

1. I am a senior associate attorney at The Webb Law Firm, which served as outside appellate counsel for Defendants-Cross-Appellants Newegg Inc., Newegg.com, Inc., and Rosewill, Inc. (collectively, “Newegg”), along with other outside counsel at the Durie Tangri LLP, Latham & Watkins LLP, McDermott, Will & Emery, and Weil Gotshal & Manges LLP firms.
2. I was the principal author of Newegg’s briefs in the above-captioned appeals. I was also the principal attorney conducting the necessary legal and factual research, as well as preparing and reviewing the necessary joint appendix materials, in connection with the above-captioned appeals. Additionally, I coordinated and facilitated meetings, telephone conferences, and correspondence among Newegg and all its outside appellate counsel as the appeal progressed.
3. Based on information from The Webb Law Firm’s accounting department, as well as information from the other law firms also representing Newegg on appeal, from the date of AdjustaCam’s notice of appeal (September 17, 2013) through the date of oral argument (April 7, 2015), the total amounts of fees and expenses billed to Newegg are as follows:

Law Firm	Fees and Expenses Billed (9/17/13 – 4/7/15)
The Webb Law Firm	\$82,776.22
Durie Tangri LLP	\$19,079.51
Latham & Watkins LLP	\$66,258.44
McDermott, Will & Emery	\$11,441.00
Weil Gotshal & Manges LLP	\$18,031.95
<u>TOTAL FEES & EXPENSES:</u>	\$197,587.12

4. In addition, Newegg incurred costs totaling \$647.51 invoiced by The Lex Group to print and file paper copies of Newegg's briefs with the Court. Copies of these invoices are attached as Exhibit A. Approximately 10% of the pages of Newegg's briefing before this Court were directed to AdjustaCam's appeal.
5. Newegg's fees, expenses, and costs incurred in connection with the above-captioned appeals, through the date of the April 7, 2015 oral argument, therefore totaled \$198,234.63. I believe this amount is fair and reasonable for handling a relatively complex appeal and cross-appeal before the Federal Circuit, and is not substantially different from the amounts Newegg has spent on other appeals to the Federal Circuit.
6. Based on my personal experience handling these and other appeals for Newegg to the Federal Circuit, and based on my professional judgment and the judgment of my co-counsel, with whom I have conferred, I estimate that approximately 15% of all my and my co-counsel's time spent on these appeals was devoted to addressing and responding to AdjustaCam's affirmative appeal on the claim construction issues.
7. Richard G. Frenkel of the Latham & Watkins firm in particular, who argued these appeals for Newegg, has indicated that he agrees that approximately 15% of his time spent working on these appeals was devoted to responding to AdjustaCam's appeal.
8. Given the extensive briefing on the claim construction issues by AdjustaCam that Newegg had to review and research, and the fact that the resulting jurisdictional challenge was a new issue not addressed before the district court in this case and therefore requiring substantial fresh research and briefing, this 15% estimate is believed to be conservative.

Exhibit A

The Lex Group VA

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TERMS	LEX REP	FILING DATE
Net 30/1	JLG	9/25/2014

DESCRIPTION	QUANTITY	RATE	AMOUNT
Straight Run-copies only/Base Fee/Federal Circuit		200.00	200.00
Confidential Brief of Defendants-Cross-Appellants/Straight Run-copies only/per page fee/Federal Circuit (8 copies of 66 pages = 528)	528	0.25	132.00
Federal Express/UPS		37.95	37.95
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CONTRACTING ATTORNEY
Daniel H. Brean THE WEBB LAW FIRM One Gateway Center 420 Fort Duquesne Blvd., Suite 1200 Pittsburgh, PA 15222

RECORD NUMBER AND STYLE
2013-1665, -1666, -1667 Adjustacam, LLC v. Newegg Inc., et al.

TERMS	LEX REP	FILING DATE
Net 30/1	JLG	11/24/2014

DESCRIPTION	QUANTITY	RATE	AMOUNT
Straight Run-copies only/Base Fee/Federal Circuit		200.00	200.00
Confidential Reply Brief of Cross-Appellants/Straight Run-copies only/per page fee/Federal Circuit (9 copies of 31 pages = 279)	279	0.25	69.75
Federal Express/UPS		7.81	7.81
<div data-bbox="393 1176 893 1554" data-label="Image"> </div>			
Net 30/1.5% monthly late fee/Federal Tax ID 11-3707249			Total \$277.56

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Balance Due	\$277.56
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9. It is my understanding that when fees incurred are “mixed” or applied across multiple issues, this Court does not require “mathematical precision” to identify the exact issues to which every billable hour should be allocated, but permits fair approximations. *See, e.g., F.B. Leopold Co. v. Roberts Filter Mfg. Co.*, no. 96-1218, 1997 U.S. App. LEXIS 16233, at *20-21 (Fed. Cir. July 2, 1997). In any event, Federal Rule of Appellate Procedure 38, under which the present motion is brought, provides that the Court may award “just damages and single or double costs to the appellee,” not that the award must constitute “reasonable attorneys’ fees.” As the advisory notes to Rule 38 make clear, this Court has considerable discretion when deciding what damages are appropriate in a Rule 38 violation: “damages are awarded by the court in its discretion in the case of a frivolous appeal as a matter of justice to the appellee and as a penalty against the appellant.”
10. For the foregoing reasons, the total amount of fees, expenses, and costs incurred by Newegg that I and the rest of Newegg’s outside appellate counsel believe are attributable to AdjustaCam’s appeal are 15% of the total, or \$29,735.19.

I declare, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge.

/s/ Daniel H. Brean

Daniel H. Brean

Executed this 4th day of
May, 2015 in Pittsburgh, PA